IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1084 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

VAGHER JUNUS HARUN

Appearance:

1. Criminal Appeal No. 1084 of 1984

MR RM CHAUHAN,APP for Petitioner No. 1

MS BANNA S DUTTA for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 18/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. This appeal preferred by the State of Gujarat is directed against the judgment and order rendered in Sessions Case No. 34 of 1984 dated 13.6.1984 by the learned Addl. Sessions Judge, Jamnagar whereby the respondent was acquitted of the offence punishable under section 307 of IPC. The learned trial judge, however,convicted the respondent for offence punishable under section 324 and 511 of the IPC and sentenced to suffer R.I. for six months. The learned trial judge also found the respondent guilty of offence punishable under section 25(1)of the Arms Act and sentenced him to suffer R.I. for six months. Both the sentences were ordered to run concurrently.

2. The prosecution case, in brief, is as under:
One Asharam was running a medical shop at Sikka town. On 3.9.1983, the respondent visited the said shop with a bottle of used medicine and demanded return of money from Asharam. Asharam demanded bill from the respondent for the purchase of medicine. Heated exchange of words took place between the respondent and Asharam. The complainant Sundermal, brother of Asharam, whose shop was situated nearby the shop of Asharam came there and told the respondent to speak in a peaceful manner. Thereafter, the respondent took out a knife and tried to assault Sundermal. Sundermal, however, caught hold of the respondent. Sundermal thereafter asked his son Kishore to call the Security Officer. The Security Officer Mr. Jayshanker Joshi sent Chowkidar Balvirsinh to the spot. On seeing Balvirsinh, the respondent threw away the knife. Sundermal handed over the respondent to Balvirsinh. When Balvirsinh was taking the respondent to Security Office, the respondent saw Security Officer Mr. Joshi and another Chowkidar Virabhai from a distance. The respondent thereafter got himself free from Balvirsinh with force and ran away. The Security Officer Mr. Joshi as well as Chowkidar Balvirsinh and Virabhai ran after the respondent. The Security Officer Mr. Joshi also asked the respondent to surrender. Instead, the respondent fired a shot from his country made handgun. When the respondent was about to fire second round, the Security Officer Mr. Joshi fired a round from his pistol in air in self defence. It appears that the pallet of the bullet fired by Mr. Joshi hit on the nose of the respondent. The respondent thereafter ran away and fell down in the creek with a view to save himself. The respondent was, however, taken out after about two hours and thereafter the complaint was filed against the respondent before Jamangar City Police Station. PSI Mr. Gor registered offence after the investigation. On the basis of prima facie material showing involvement of the

respondent in the offence, chargesheet was filed before the learned Judicial Magistrate, First Class, Jamnagar, who in turn, committed the case to the Court of Sessions at Jamnagar.

3. The charge Ex.3 for offences punishable under sections 307, 324, 506(2) of IPC and section 25(1) of the Arms Act was framed. The respondent pleaded not guilty to the charge and claimed to be tried.

4 The learned trial judge, after appreciating oral as well as documentary evidence on record including further statement of the respondent under section 313 of the Code of Criminal Procedure, was of the view that the prosecution has failed to prove the charge under section 307 of IPC. However, the learned judge convicted the respondent for offences punishable under section 324 and 511 of IPC and section 25(1) of the Arms Act.

5. The respondent has not preferred appeal against the order of conviction and sentence and he has already undergone the sentence of imprisonment. The only question, therefore, which is required to be decided in this appeal is whether the learned trial judge was justified in acquitting the respondent for offence punishable under section 307 of IPC. For passing the order of conviction under section 324 and 511 of IPC, the learned trial judge has accepted the evidence of complainant Sundermal Ex. 8, Asharam Ex. 10, Chowkidar Balvirsinh Ex. 11, Security Officer Jayshankar Joshi Ex. 12, Hanif, panch of discovery panchanama Ex.24 and Investigating Officer Mr. Gor Ex. 27 in toto. From their evidence, not only the presence of the respondent at the place of incident is established, but his involvement in the commission of offence is also proved. After having gone through the evidence of the aforesaid witnesses, we are clearly of the opinion that no error whatsoever is committed by the learned trial judge in holding the respondent guilty of offence punishable under section 324 and 511 of IPC.

6. However,from the evidence on record, it is clear that the respondent did not use fire arm at the time of exchange of heated arguments with Asharam and his brother Sundermal. Not only that, he also did not make use of fire arm when he was handed over to Chowkidar Balvirsinh. He used fire arm only when he saw the Security Officer Mr. Joshi and other Chowkidar from distance and that too, to release himself with a view to escape. Balvirsinh Ex. 11, in his evidence, has stated that the respondent fired at them from a distance of 100 to 150 feet. This will go to show that there was no intention

on the part of the respondent to commit murder. The respondent fired country made hand gun only with a view to get himself released so that he can escape. In our opinion, the ingredients of section 307 IPC, in the instant case, are not at all satisfied. Therefore, the respondent cannot be convicted for offence punishable under section 307 of IPC.

6. Since we are in total agreement with the reasonings and the ultimate conclusion reached by the learned trial judge acquitting respondent for the offence under section 307 of IPC and as we see no merit in this acquittal appeal, as held by the Supreme Court in the case of State of Karnataka Vs. Hemareddy, AIR 1981 SC 1417, it is not necessary for us to repeat the narration of evidence or to reiterate the reasonings given by the trial court. Suffice it to say that the learned APP is not in a position to dislodge any of the reasonings of acquittal recorded by the learned trial judge.

7. There being no substance in this appeal, it is dismissed. Order regarding muddamal to be carried out as per the directions of the trial court.

(Kshitij R.Vyas,J.)

(Kamal M.Mehta,J.)

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